

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
APRIL 18, 2017
MINUTES**

PRESENT: Chairman Baum, Members Martuscelli, McCarthy and Zuckerman; Building Inspector Cocks; Kelly M. Naughton, Esq.

ABSENT: Member Margotta

Chairman Baum called the meeting to order at 8:05pm with the Pledge of Allegiance to the flag.

1. Elizabeth and Matthew Johnson – Area Variance (210-4-6)

Present: Matthew Johnson

The application of Elizabeth and Matthew Johnson, pursuant to the Village of Monroe Zoning Law, Section 200-34 (C): Accessory Building Setback. The Village Code requires a setback of 10' from any lot line; the proposed rear setback is less than 1'. The property, which is the subject of said action by the Board, is located in the SR 10 Zoning District and is identified as Section 210-4-6 on the tax map of the Village of Monroe and is also known as the address 10 Crescent Place.

Chairman Baum advised Mr. Johnson that in the event of a tie vote an application would by law be denied because only four Board members were present. Mr. Johnson was given the option to postpone his application another month when there might or might not be a full board. Mr. Johnson chose to proceed with the appeal at this meeting.

Secretary Doherty advised that the certificates of mailing were in good order and had been received in a timely manner.

Mr. Johnson began by saying that he and his wife purchased their house in 2007. When they bought the house they were issued a letter which stated that there were no violations or open permits against the house. This past January they decided to sell the house because they are looking to upgrade. It was then that he and his wife learned that there were four open permits on the house and there was no building permit for the shed on their property.

The Johnsons were not the first owners of this house. Mr. Johnson presented several documents from previous owners, some of which contradicted each other, which ultimately suggested that there were no open violations or outstanding permits. Specifically:

- A. An inspection report from 1992 stated that there were no violations against the property;
- B. A letter from the Village of Monroe dated April 9, 1998 stated that there were open permits on the house but another letter dated April 23, 1998 stated there were no violations on the property;
- C. An internal inspection report dated June 16, 2005 and a letter from the Village of Monroe dated June 27, 2005 noted the shed violation (this was the first written notice of the shed);
- D. An internal inspection report from 2007 when Mr. Johnson and his wife purchased the home which listed all four open permits and noted that a building permit was required for the shed. Mr. Johnson said he did not receive this information when he closed on his house;
- E. A letter received two weeks after Mr. Johnson purchased his home stating that there were no open violations on the house.

Internal inspection reports and letters in sections A – D were only recently requested and received by Mr. Johnson through the Building Department upon advice of his realtor.

Mr. Johnson concluded by saying that the Village should have been aware of the outstanding permit issues and the shed violation yet every time ownership of the house changed the Village allowed the sale to go forward without addressing these problems.

Mr. Johnson said that he is now in contract with a buyer. He has worked with Building Inspector Cocks to close all the open permits, one of which dated back to 1964. The only outstanding issue is the shed which was built without a permit in 1979 when the pool was put in.

Mr. Johnson read through the criteria to determine if a variance was justified:

- a. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance. He said that while the shed is a little close to the property line it's not close to any other building and when you look at the shed from the street you wouldn't know it's near a property line. The only person the shed impacts is their neighbor with whom they share a property line, and that neighbor submitted a letter stating they have no objections to the shed.
- b. Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance. Mr. Johnson said the benefit they seek would not be achievable through any other feasible method. Their options are to remove the shed and replace it with fencing (to continue

the enclosure around the pool). Removing the shed would cost between \$1,000 and \$1,500, and the fencing would cost between \$2,000 and \$3,000, for a total of \$3,000 to \$4,500. Mr. Johnson told the board that he is selling his home at a loss so there is no way they can recoup this money.

- c. Whether the requested area variance is substantial. Mr. Johnson said that while the requested variance is nine feet the building code is currently being revised. When the new code is adopted the variance will only be four feet. He noted in addition that the shed is not near any other building and will never be near another building. The neighbor with whom he shares a property line already has a shed.
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Mr. Johnson said that the shed, which is used to house basic garden tools, was built over 30 years ago. Mr. Johnson was of the opinion that the shed does not in any way adversely affect the physical or environmental conditions of the neighborhood.
- e. Whether an alleged difficulty is self-created. Mr. Johnson said that this is a problem he and his wife “inherited.” The shed was built before he was born. The Johnsons are just trying to straighten everything out.

Member Zuckerman asked about the condition of the shed. Mr. Johnson replied that the shed is in good shape in terms of if being structurally sound. It is not going to fall down and it is not an eyesore. However, it is an older shed. Mr. Johnson asked WMB Construction if they could lift the shed and relocate it. They said no, they would not be able to pick up the shed and move it. Other than that it’s in good shape.

Member McCarthy asked how long the house was up for sale? Mr. Johnson said they had an accepted offer within a week of the house being put on the market. Member McCarthy continued by asking if it was fairly certain that the sale would close? Mr. Johnson said yes, but the buyer can opt out. He and his wife are also trying to time this to coincide with the end of the school year since she is a teacher.

Building Inspector Cocks noted for the record that the building code (not the zoning code) has a fire setback for property lines. Normally a two foot setback is required for buildings, depending on the size of the structure. Building Inspector Cocks said that the Johnsons are in compliance with the building code as far as fire separation.

Chairman Baum asked what would happen if the Johnsons removed the shed? Mr. Johnson answered that the prospective buyer can opt out of the contract – he would lose the buyer. Mr. and Mrs. Johnson are in the process of buying another house and they have an accepted

offer. If Mr. Johnson loses the buyer of 10 Crescent Place he will have to carry two mortgages and there is no way he can afford to do that. He will therefore have to back out of the sale of the home he is in contract to buy and he will lose the \$10,000 deposit he put down on the house.

Chairman Baum asked if Mr. Johnson discussed this with the attorney and the buyer. Will the buyer back out if the shed is removed? The buyer might not care about the shed. Mr. Johnson had not discussed this with the attorney or the prospective buyer. However, he reiterated to the Chairman that he would incur costs to remove the shed and replace the fencing, costs which will not be recovered in the sale of the house.

Chairman Baum asked how Mr. Johnson knows that the shed was built in 1979? Mr. Johnson said that the pool dates to 1979 and since the shed forms part of the enclosure around the pool that is required by law he believes that the shed was built at the same time.

Member Zuckerman suggested that if the variance is granted they make it just for this shed. Chairman Baum said that they can grant the variance for the life of the structure. The Chairman explained to Mr. Johnson that this means that if the shed were ever removed or destroyed they could not replace it with a shed in the same location. The new location would have to be in compliance with whatever setback requirements there are at the time.

Member McCarthy asked if the buyer of Mr. Johnson's house would be aware of this stipulation. Building Inspector Cocks said it would be written on the Certificate of Occupancy which would be given to the new owner when he closes on the house.

On a motion made by Chairman Baum and seconded by Member McCarthy, it was unanimously: **Resolved to classify this as a Type 2 Action pursuant to SEQRA and that no further environmental review is required:**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (Absent)

Chairman Baum opened the hearing up to the public. No one from the public was in attendance.

On a motion by Chairman Baum and seconded by Member McCarthy, it was unanimously:

Resolved to close the public hearing.

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (Absent)

Discussion ensued about this application. Chairman Baum agreed with the applicant that there would be no undesirable change that would be produced in the neighborhood. The shed has been in existence for about forty years. The neighbor whose property it abuts has written a letter stating that she has no objection to the shed.

Chairman Baum continued by saying that the only method to pursue would be to remove the shed and possibly relocate it. Based upon the costs involved and how long the shed has been there this isn't feasible.

Is it substantial? With the new requirement coming in for five feet and given the totality of the circumstances the Chairman did not think it was that substantial.

The Chairman also felt that it would not have any adverse impact on the physical or environmental condition of the neighborhood. Member McCarthy pointed out that nobody has objected to it.

The Chairman concurred that this was not a self-created condition. When the Johnsons purchased the house the shed was already there.

On a motion made by Chairman Baum and seconded by Member Zuckerman, it was unanimously: **Resolved to grant the application on the condition that if the shed is ever destroyed or removed it cannot be rebuilt in the same location and it would have to comply with the requirements at that time unless variances are obtained.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (Absent)

ADOPTION OF MINUTES FROM NOVEMBER 8, 2016 MEETING

Adoption of the minutes was tabled to the next meeting because there was not a quorum to vote on this matter.

ADOPTION OF DECISION FOR STEVE BROWN / HUDSON VALLEY REALTY – AREA VARIANCE

Adoption of the decision was tabled to the next meeting because there was not a quorum to vote on this matter.

NEW BUSINESS

Chairman Baum welcomed new ZBA member Jerry Martuscelli. We appreciate him joining the Board! He advised Member Martuscelli that there are education requirements that can be

fulfilled by attending classes offered by Orange County Municipal Planning Federation. The classes are very good and Chairman Baum urged Member Martuscelli to go to as many of them as he could.

Secretary Doherty advised that the spring course schedule from Orange County Municipal Planning Board had been received and was included on tonight's agenda. Members Martuscelli and McCarthy signed up for the "Zoning Board Overview" class to be held on Tuesday, April 25th.

Secretary Doherty advised the Board that the Village of Monroe Police is asking employees and board members to get ID cards from the Police Department. All Board members need to fill out an ID Card Information sheet, bring it to the Police Department and have their picture taken.

Building Inspector Cocks told the Board that the Village of Monroe has membership with New York Municipal Insurance Reciprocal (NYMIR) which offers continuing education courses of all types, including Planning and Zoning training, at no additional cost to Board members. Board members were encouraged to use the valuable resource.

ADJOURNMENT:

On a motion by Chairman Baum, seconded by Member McCarthy, with all in favor, **there being no further business, the meeting was adjourned at 8:42pm.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (Absent)

Respectfully submitted,



Elizabeth Doherty
ZBA Secretary